



# NORTH CAROLINA GENERAL ASSEMBLY

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### MEMORANDUM

To Joint Legislative Oversight Committee on Justice and Public Safety

From Douglas Holbrook  
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Subject Justice Reinvestment Act of 2011

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This memorandum to the Committee is a general overview of the provisions of the Justice Reinvestment Act of 2011, which makes broad changes to sentencing law and policy in North Carolina with the goal of reducing admissions to prison, promoting more effective use of community resources for dealing with offenders, and increasing reasonable responses to repeat criminal behavior. The memorandum is organized by the Parts of House Bill 642, the version of the Justice Reinvestment Act that passed the General Assembly during the 2011 session.

#### **Part I Strengthen Probation Supervision**

This Part generally broadens the authority of the Probation Officer to supervise offenders based on their risk of reoffending and their crime-producing needs. It changes the definitions of Community and Intermediate punishments under Structured Sentencing to allow the court to order a group of conditions in addition to the Regular and Special Conditions of Probation. These include electronic house arrest, split sentence, community service, substance abuse treatment, and short-term jail sentences not exceeding six days per month.

By adding these conditions to the set of options available to the court for both Community and Intermediate punishments, the Part also makes them available to the supervising officers through Delegated Authority. Under the Delegated Authority statute, the probation officer can, unless expressly blocked by the judge, require a probationer to comply with a variety of additional conditions without returning to court for a modification. Thus, under this bill, probation officers would have a much more expansive array of options with which to respond to offender behavior.

The most significant element of this expansion is the addition of jail confinement to the options available under Delegated Authority. Currently, there is no provision for a probation officer to put an offender in jail without an arrest warrant. Under this bill, the offender is given an opportunity to waive a hearing and submit to short periods of jail confinement, not more than six days per month, rather than appear before a judge and face a complete revocation. Research on such programs in other states, specifically Georgia and Hawaii, indicate that such swift and certain response to misbehavior is highly effective in reducing recidivism.

The bill also requires the Department of Correction to assess each offender placed on probation, using a validated instrument, to determine the offender's risk of reoffending and *criminogenic* needs (those factors that make people more likely to commit crime). It is the intent of the legislation that each offender's supervision level should be determined by objective risk assessment, rather than sentencing level. The bill modifies the caseload goals articulated by the General Assembly to establish a goal that offenders assessed at moderate to high risk of re-arrest should be supervised in caseloads not exceeding 60 offenders per officer.

## **Part II Post-Release Supervision Changes**

Section II of the bill requires post-release supervision for all felon offenders who serve an active sentence in prison. Currently, post-release supervision is only available for Class B1-E felons, who comprise less than half the exits from prison. This change can be expected to increase admissions to post-release supervision by over 14,000 offenders a year. More specifically, this Section sets a period of twelve months of supervision for Class B1-E felons and nine months for Class F-I felons. In Section 2(d), the bill specifies that offenders who fail to comply with their conditions may be revoked for only three months unless they commit a new crime or they abscond. Offenders may be revoked twice for technical violations; on the third technical revocation, they will serve out the remainder of their term. Offenders revoked for committing a new crime or absconding will serve the remainder of the sentence, in addition to any sentence imposed for the new crime.

## **Part III Status Offense of Habitual Breaking and Entering**

This Section changes the existing definition of Habitual Felon and creates a new status offense for Habitual Breaking and Entering. Currently, an offender may be charged as a Habitual Felon when, with three prior felony convictions, he is charged with another felony. If he is convicted as a Habitual Felon, he is sentenced as a Class C felon, carrying a mandatory active sentence of at least five years. Under this bill, the definition of the general Habitual Felon status remains the same, but the sentencing level is predicated on the triggering (fourth or subsequent) offense. The sentencing level would be set four classes higher than the triggering offense, but capped at Class C.

This section also creates a separate habitual felon statute for repeat breaking and entering. Offenders achieve habitual breaking and entering status upon committing a breaking and entering offense with one prior conviction of any other offense in the same family, including burglary. Offenders convicted of this status offense would be sentenced as Class E felons.

## **Part IV Limit Time/Certain Violations of Probation**

Part IV caps the time an offender could serve on a revocation of probation for strictly technical violations at up to 90 days. Neither commission of a new crime nor absconding from probation is considered a technical violation and thus can result in activation of the full sentence. These 90-day revocations would result in reductions in prison beds occupied by revoked probationers since they would not serve as long on a revocation as they currently do. However, since the offender would come out of prison with time remaining on the probation sentence, it is possible that the offender could serve more than one 90-day revocation term, thus increasing actual admissions.

## **Part V Diversion Program/Felony Drug Possession**

Part V contains two separate policy changes. First, the bill expands the population eligible for a deferred prosecution program for first-time drug possession offenders. Currently, only defendants charged with misdemeanor drug possession or felony possession of less than an ounce of cocaine may have their charges suspended by the judge and be placed on probation for a period of supervision and treatment. This bill adds all first-time felony drug possession defendants to the eligible population and requires the court to defer prosecution for all eligible defendants.

Second, this Part of the bill creates a new program within the Department of Correction, called Advanced Supervised Release (ASR), to allow offenders with D-H class convictions to reduce their sentence, at the discretion of the judge absent any objection by the prosecutor, by completing rehabilitative programming. In practice, a judge would select a rehabilitative program for the offender and set the ASR release date, the lowest mitigated sentence length for that conviction. If the offender successfully completes the rehabilitative program, he will be released at the shortened sentence length.

## **Part VI Refocus Criminal Justice Partnership Program**

The State-County Criminal Justice Partnership Program was created in concert with the Structured Sentencing Act in 1993 to provide for supplemental community corrections programs through a formula-based grant process. House Bill 642 repeals the Partnership Act and establishes a new supplemental community corrections program called Treatment for Effective Community Supervision (TECS). Unlike the old CJP program, TECS would not have a funding formula for each county based on population and probation caseload. Instead, the Department of Correction would use TECS funds to establish contracts with program providers at the county level who would be paid on a fee-for-service basis. The section also creates an advisory board to assist the Department in making funding decisions.

## **Part VII Misdemeanants to Serve Sentences in Jail**

This section modifies the current statute that assigns responsibility for housing misdemeanor offenders between State and county. Currently, offenders sentenced to less than 90 days active time serve their sentence in the custody of the county sheriff and those with 90 days or more serve their sentence in the state prison system. This bill would raise the threshold to 180 days. Further, this section specifies that, in order to be placed in the custody of the Department of Correction, the offender must have over 180 days remaining to serve, net of any credit for time served.

This has the effect of reducing admissions to prison substantially, but also requiring more confinement resources in the counties. The Sentencing Commission estimates a savings of between 1,000 and 1,200 prison beds immediately by shifting misdemeanants into the county systems.

In response to this issue, the bill establishes a special non-reverting fund, the Statewide Misdemeanor Confinement Fund, to be held by the Department of Correction and administered by the Sheriff's Association to reimburse counties for housing misdemeanants and to coordinate a transfer program to track available capacity and move misdemeanants.